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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 GILEAD SCIENCES, INC. and
4 EMORY UNIVERSITY,

Plaintiffs,

5 v.

08 Civ. 10838 (RJS)

6 TEVA PHARMACEUTICALS USA, INC.
7 and TEVA PHARMACEUTICAL
8 INDUSTRIES LIMITED,

Defendants.

9 -----x

10 New York, N.Y.
11 December 7, 2012
12 4:05 p.m.

Before:

13 HON. RICHARD J. SULLIVAN,

14 District Judge

15 APPEARANCES

16 FITZPATRICK CELLA HARPER & SCINTO
Attorneys for Plaintiffs
17 BY: COLLEEN TRACY
18 PETER D. SHAPIRO

19 KENYON & KENYON
Attorneys for Defendants
20 BY: JAMES W. GALBRAITH
21 MARIA L. PALMESE
22 KAREN SHEN
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1 (Case called)

2 MS. TRACY: Good afternoon, your Honor, Colleen Tracy
3 for Gilead Sciences. I'm here with my colleague, Peter
4 Shapiro, also for Gilead Sciences.

5 THE COURT: Good afternoon.

6 And for the defendants?

7 MR. GALBRAITH: Jim Galbraith, Kenyon & Kenyon, for
8 the defendants, and with me is Maria Palmese and Karen Shen.

9 THE COURT: And you're all on the docket sheet, I
10 think, right?

11 MR. GALBRAITH: Yes.

12 THE COURT: Yes. Good afternoon to each of you.

13 I should be on permanent retainer to you, folks.

14 We have a trial scheduled for February, another for
15 June, and now you're asking for one in this case for some time
16 after August, right? I guess I can accommodate it.

17 To what extent will the verdicts in the first two
18 cases have implications for this case and the trial in this
19 case?

20 Anybody? Ms. Tracy or Mr. Galbraith.

21 MR. GALBRAITH: Decisions in the first two cases --
22 let me back up. There are three drugs involved. All three
23 drugs contain the compound called minus beta FTC, which is the
24 subject of this case that we are here about today. It is
25 implicated in all three drugs. So a decision adverse to Teva

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1 would be those three drugs.

2 But the decisions in the other two cases, because they
3 would probably be sort of nonfinal at the time that this case
4 was tried, in other words, your Honor would decide them and
5 there would probably be an appeal, so they would still be in a
6 state of flux, so they would have no direct impact on a trial
7 of this case, unless that trial were put off until say 2014.

8 THE COURT: Even that's optimistic, probably, for the
9 circuit.

10 Let's see what we can schedule. You agree with that,
11 Ms. Tracy?

12 MS. TRACY: Yes, your Honor, I agree.

13 And I think it was most fair for Mr. Galbraith to
14 speak to that point since it's his client's plans to
15 commercialize the products that would impact whether or not the
16 FTC trial would be necessary, even after the two trials that
17 would take place beforehand.

18 THE COURT: Let's see what we got after August 1. I
19 think it may need to be sort of early fall instead.

20 MR. GALBRAITH: Your Honor, I think we had said after
21 August 1. August would probably be problematical for a trial
22 for a number of reasons, primarily availability of the people,
23 witnesses.

24 THE COURT: Usually, I figured August is always a
25 tough time to have a trial, but you never know. But I think

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1 September is going to be tough for me, I believe. How about
2 October 8, would be the day after Columbus Avenue?

3 How long a trial this would be? Bench trial, right?
4 How many days?

5 MS. TRACY: Yes, your Honor, it is a bench trial. And
6 I would anticipate, although I have not had a chance to confer
7 with Mr. Galbraith on this issue, the trial would last about
8 five trial days.

9 THE COURT: That is using my nonjury trial method of
10 affidavits.

11 MS. TRACY: Correct. We will also, as we told you at
12 the beginning of these cases, there will be some overlap. And
13 so we will minimize the overlap from what we have heard in the
14 TDF case and the FTC case, so we may be even able to streamline
15 it a little bit more.

16 THE COURT: That sounds fine. I think probably we
17 should wait until we get a little closer before I set the
18 schedule for submissions. We should at least see what happens
19 in the first one. Maybe I should ask the parties to make a
20 submission in -- when is the second trial?

21 MR. GALBRAITH: June 24, your Honor.

22 THE COURT: This will be determined when I issue a
23 ruling on the first trial. I will send you something in the
24 late spring to just say, anything we need to talk about,
25 anything that's changed? And then I'll set a scheduling order

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1 for the October trial around then. But you can lock in the
2 trial date, I'll do the same. So October 8 will be the trial
3 in this case.

4 MS. TRACY: Thank you, your Honor.

5 MR. GALBRAITH: Thank you, your Honor.

6 THE COURT: Anything else we should cover today? Any
7 more trials we should schedule?

8 MS. TRACY: We don't have anything else from
9 plaintiffs, your Honor.

10 MR. GALBRAITH: Nothing for the defendants.

11 THE COURT: I feel guilty having five lawyers here for
12 a five-minute conference, but always good to see you. Have a
13 nice weekend. Enjoy the holidays.

14 MS. TRACY: We will actually see you in a week, your
15 Honor, next Friday.

16 THE COURT: Let me thank the court reporter as always
17 for his time and efforts.

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